

### REMARKS

In the last response, claims 1-11 were cancelled without prejudice. In an effort to more clearly define the invention so as to overcome the objections and rejections set forth by the Examiner in the Office Action mailed July 29, 2005, Applicant has presented altered claims 12, 13, 15, and 21. Claims 14, 16, 17, 18, 19, 20, 22, and 23 have not changed. Reconsideration of the above-identified patent application is hereby requested.

### **CLAIM OBJECTIONS**

The examiner has objected to claims 12-17 and 21-23 under the appropriate paragraphs of 35 U.S.C. 102 as being unpatentable over U.S. Patent No. 6,756,541 issued to Mollick. It is axiomatic that for a reference to be anticipatory, each and every feature in the claims must be disclosed by a single reference. Applicant respectfully submits that Mollick does not anticipate the features present in claims 12-23 that facilitate wall penetration of flexible tubing such that the flexible tubing cannot kink inside the wall.

Regarding claim 12, the apparatus disclosed in Mollick is designed specifically to "provide an improved molded, electrical box and includes a new and improved mounting structure." U.S. Pat. No. 6,756,541 at 2: 50-53. At no point does Mollick disclose or suggest that the apparatus described and claimed therein can be used to facilitate wall penetration of flexible tubing. Nor does Mollick teach or suggest an assembly capable of preventing the wire, or any material disposed therein, from becoming kinked inside the wall.

The examiner also noted that Mollick discloses "an elongated sleeve comprised of a tube or channel having a first side 112, and second side 114, and a first open end 25 opposed to a second open end 20 (knockouts in surface 20 are the second

opening).” However, Applicant believes that the electrical outlet box taught by Mollick differs substantially from the elongated sleeve in the present invention. Specifically, the first open end 25 and the second open end 20 are not “opposed.” The American Heritage Dictionary of the English Language defines oppose as meaning “to place so as to be opposite something else”. Mollick’s openings are not directly opposed. This distinction is significant since it precludes the shield taught by Mollick from performing the primary function of the claimed invention, namely facilitating the installation of flexible tubing without kinking inside the wall.

Next, claim 12, refers to “an elongated sleeve comprised of a tube or channel”. However, the applicant believes that the Mollick device is a box with one open side and holes in a corner, but not a tube or channel. A tube is enclosed on four sides and open on the opposite ends. A channel is enclosed on all but one side and open on the opposite ends. This is an important structural difference between the Mollick device and the claimed invention.

Additionally, Mollick requires two separate mounting members (134 and 134A) where the present invention requires only one. This is an important structural difference between the two devices.

Further, claim 12 has been revised such that it refers to “an upper side” and “a lower side” to further differentiate the device from the prior art. Note that Mollick’s attachment plates are attached to the upper and lower sides, not the first or second sides as in claim 12.

The Examiner notes that Mollick comprises “the geometric angle (front surface of hole 132) between the attachment plate and elongated tube is such that, when the shield assembly is mounted to a building-framing stud, flexible tubing may be

installed into the shield assembly without kinking." Claim 12 has been revised to read "The geometric angle between the centerline of the longitudinal direction of the said attachment plate and the elongated dimension of the said elongated sleeve is such that, when the centerline of the longitudinal direction of the said attachment plate is vertical, the first open end faces at an upward angle and the second open end faces at a downward angle." Mollick does not have an open end that faces a downward angle. Mollick also does not have an attachment plate that can be attached where its centerline of the longitudinal direction is vertical.

Finally, Applicant notes that the outlet box disclosed in Mollick also lacks sufficient structure to prevent water infiltration into the wall when installed. As rewritten, claim 12 requires that the second open end, which protrudes out of the wall, to face a downward angle. This has the effect of resisting water infiltration. By contrast, Mollick is designed as two or more separate pieces. Since the outlet box in Mollick is designed for electrical outlets, when installed in an exterior wall, a separate cover plate is required to prevent exposure to electrically charged wires and to prevent water infiltration. The structure of claim 12 is a one piece assembly that slopes downward through an exterior wall when mounted. Such structure prevents water infiltration into the exterior open end of the elongated sleeve without the need for additional protective structures.

Regarding claim 13, the word "angle" has been replaced by "plate" to correctly match the wording of claim 12.

With respect to claims 13 and 14, by virtue of being dependant on independent claim 12, the embodiment of the invention claimed in claims 13 and 14 also include the structural limitations of claim 12. Therefore, dependent claims

13 and 14 are allowable over Mollick for the same reasons asserted above in relation to claim 12.

With respect to claim 15, applicant submits that several of the above arguments with regards to claim 12 apply. Specifically, Mollick does not achieve the same advantages as the present invention. The open ends in Mollick are not opposed. The Mollick device does not include a tube or channel. Mollick requires two attachment devices while the present invention only requires one attachment angle. Mollick does not have an open end that faces a downward angle. Finally, Mollick requires two separate pieces to protect against water infiltration while the present invention only requires one.

In addition, the Examiner notes that Mollick comprises "an attachment angle 150A of sufficient strength to resist deformation due to manually applied pressure; said attachment angle 134A affixed to across the vertical midsection of the bottom side of the elongated tube or channel;". Since the attachment angle is referred to once as 150A and then by 134A, the applicant is unsure which applies. The Applicant believes that neither 150A nor 134A are "angles", but are semi-circular flanges. 134A is used to attach the assembly directly to a framing stud. The device in claim 15 actually mounts to the building sheathing to the rear of the apparatus, not a framing stud to the first or second side of the apparatus. With respect to 150A, Mollick says "The electrical outlet box 100 is further provided with a pair of lugs 150, 150A extending upwardly from the top and bottom walls which are threaded to accommodate mounting screws for an electrical switch or receptacle within the box." U.S. Pat. No. 6,756,541 at 4:66 - 5:2. Since 150A is for mounting electrical devices in the box, it can be seen that Mollick has no provision for mounting to the sheathing of a stud wall as does the present invention.

Finally, claim 15 has been rewritten to "The geometric angle between the attachment angle and the upper or lower side of the said elongated sleeve is such that, when the attachment angle, first, and second sides are vertical, the first open end faces at an upward angle and the second open end faces at a downward angle." With Mollick, it is not possible for the attachment angle, first, and second sides to be vertical.

With respect to claims 16 and 17, by virtue of being dependant on independent claim 15, the embodiment of the invention claimed in claims 16 and 17 also include the structural limitations of claim 15. Therefore, dependent claims 16 and 17 are allowable over Mollick for the same reasons asserted above in relation to claim 15.

With respect to claim 21, applicant submits that several of the above arguments with regards to claims 12 and 15 apply. Specifically, Mollick does not achieve the same advantages as the present invention. The open ends in Mollick are not opposed. The Mollick device does not include a tube or channel. Mollick requires two attachment devices while the present invention only requires one attachment angle. Mollick's attachment devices are not attached to the first or second sides. Mollick does not have an open end that faces a downward angle. Finally, Mollick requires two separate pieces to protect against water infiltration while the present invention only requires one.

The Examiner notes that Mollick comprises "said attachment angle 134 being affixed to one of the first or second sides of the elongated sleeve such that the one of more attachment holes are oriented to permit installation of attachment hardware into building exterior sheathing;" 134 is oriented such that mounting hardware can only be attached to a framing stud to the first or second side of the apparatus. It cannot be attached to the

building exterior sheathing to the rear of the apparatus. This is an important structural difference between the two devices.

With respect to claims 22 and 23, by virtue of being dependant on independent claim 21, the embodiment of the invention claimed in claims 22 and 23 also include the structural limitations of claim 21. Therefore, dependent claims 22 and 23 are allowable over Mollick for the same reasons asserted above in relation to claim 21.

In view of the foregoing discussion, Applicant submits that the S 102 rejection is overcome with regards to Mollick. Thus, Applicant respectfully requests that the Mollick S 102 (b) rejections be withdrawn.

With regards to claims 18-20, these are "objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." Claims 18-20 are dependent upon claim 15. In consideration of the above arguments, applicant submits that claim 15 should be allowable and therefore claims 18-20 as they are written.

#### CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

Respectfully submitted,

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By: 

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